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Subject: Statewide TMDL Policy Committee
Date: Thursday, August 01, 2013 4:07:04 PM

Greetings everyone –

I wanted to send you a brief note to give you an update on recent events and identify a date for the committee's next meeting. Please respond to this doodle poll to let us know when you will be available in September. In consideration of committee members who need to travel to Salem to attend a meeting, we will likely schedule the meeting from 10:00 to 3:00.

<http://www.doodle.com/34ibibvmarzppepe>

I also wanted to let you know that meeting notes and materials from the January 30, 2013, meeting are available here: <http://www.deq.state.or.us/wq/tmdls/tmdlsPolicy.htm>

When the committee last met in January, we envisioned reconvening the group in June. However, the labors of the legislative session prevented us from making headway on the topics we had planned to work on to bring to the committee (e.g., adaptive management framework).

We've also been quite busy on matters related to ongoing litigation that have created considerable uncertainty about our path forward on the Mid-Coast temperature TMDL and TMDLs in general. In brief:

CZARA Settlement Agreement

- DEQ could not meet the settlement agreement dates for issuing the Mid Coast Implementation Ready TMDL or for the Onsite septic system time-of-transfer inspection requirement. We notified EPA and NOAA that more time is needed to complete our work on these.
- DEQ and DLCD have been working with EPA and NOAA to find alternative ways to meet the CZARA requirements without using the Mid Coast Implementation Ready TMDL to meet the CZARA settlement agreement conditions.
- DEQ and DLCD submitted their plan to meet the remaining CZARA requirements to EPA and NOAA on July 1, 2013. The submittal is available at:
<http://www.deq.state.or.us/wq/tmdls/docs/midcoast/CZARASignedletter.pdf>
- We hope to have initial feedback from EPA and NOAA on Oregon's submittal by August or September.

Temperature Standard Litigation

- On 4/10/13, an Oregon Federal District court set aside EPA's approval of a key provision of Oregon's temperature standard, the "natural conditions criterion," and ordered EPA to revise its approval of the provision by 8/8/13.
 - o The court found that EPA improperly approved Oregon's natural conditions criteria for temperature in 2004.

- o The natural conditions criterion accounts for the fact that some Oregon streams have water temperatures that are naturally warmer than the numeric criteria contained in Oregon's water quality standards.
- The court order requires EPA to take action on Oregon's water quality standard for temperature by August 8, 2013. Based on ongoing discussions with EPA, DEQ anticipates that EPA will disapprove the natural conditions criteria and the statewide narrative criteria and that EPA will consider the remaining portions of Oregon water quality standard for temperature to be in effect for Clean Water Act purposes.
 - o If EPA's disapproval action is issued as anticipated, that means that, until such time as the Environmental Quality Commission revises the temperature standard and EPA approves a revised standard, the biologically based numeric criteria, along with the protecting cold water provision and the human use allowance, will remain in effect for Clean Water Act purposes.
- DEQ is developing an action plan for moving forward with its permitting and TMDL programs under this new scenario while the agency considers longer term options for revising the temperature standard. We will be discussing our proposed action plan with the EQC and stakeholders in August and in the months following as we consider options for addressing the fact that many of Oregon's rivers are at times warmer than the biologically based numeric criteria.

Temperature TMDL Litigation

- An additional, ongoing lawsuit alleges (among other things) that EPA violated the Clean Water Act, the Endangered Species Act and the federal Administrative Procedures Act when it approved 14 Oregon temperature TMDLs based on the natural conditions criterion and asks the court to vacate EPA's approvals of those TMDLs. DEQ joined the lawsuit as an intervenor. The judge is allowing time for EPA and the plaintiff to try to settle the lawsuit before moving forward with the case. If the parties can't make progress on settlement talks within the next month or two, the judge will likely set a briefing schedule and the case will start moving forward.

All of these matters significantly affect Oregon's work on Implementation Ready TMDLs and will potentially affect the work of this committee. We will discuss the outcomes and implications of these matters with you at our next meeting.

In the meantime, if you have any questions on these matters or our work on the Mid-Coast TMDL, please don't hesitate to give me a call.

Greg

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